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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/299,309	04/26/1999	GLEN R. WALTERS	BC9-98-105	3115
23334	7590	12/11/2003		
FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487			EXAMINER FERRIS, DERRICK W	
			ART UNIT 2663	PAPER NUMBER 14

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/299,309

Applicant(s)

WALTERS ET AL.

Examiner

Derrick W. Ferris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. **Claims 1-24** as amended (11/13/2002) are still in consideration for this application. Applicant had previously amended claims 1-24.
3. Examiner **withdraws** the obviousness rejection to *Garroppo et al.* for Office action filed 1/30/2003. Upon further review by the examiner it is determined that a first device may not be clearly taught by the singular reference. As such, the rejection has been withdrawn and a new rejection was made in order to place the rejection in better condition for appeal. In response to applicant's arguments, please also note the subtle scope shift where the examiner's new position is that the subject matter in relation to a high bandwidth connection and second speed is no longer obvious but either inferred or taught (i.e., anticipated) by the *Garroppo* reference. Thus the new rejection need not take into consideration a motivation for a high-bandwidth connection since the high bandwidth connection is now considered inferred or taught by *Garroppo*. (See new rejection below for further clarification on how the reference teaches or infers the limitations.) Since the rejection is still based on the claims as necessitated by amendment, the rejection is still made final.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-24 as amended** are rejected under 35 U.S.C. 103(a) as being unpatentable over “A teletraffic analysis of dial-up connections over PSTN” by *Garroppo et al.* (“*Garroppo*”) in view of “Internet Basics” to *Jones*.

As to **claims 1, 9, 15, and 20**, applicants invention is directed towards a method of simulating a “low-bandwidth” connection over a “high-bandwidth” connection using a “speed control layer” (e.g., see applicant’s figure 1). *Garroppo* is directed towards the traffic analysis of a dial-up connection over the PSTN. With respect to the claimed subject matter, examiner notes a first speed as either 128Kbps or 64Kbps from the access server to the Internet in reference to figure 1 (e.g., see Section 2nd, 4 paragraph on page 1191). A speed-control layer is shown as the access server in figure 1 including a router acting as a proxy. A second device is shown as a client device with a modem which connects at a second predetermined speed of either 33.6K or 28.8 Kbps (e.g., see Section 2, 3rd paragraph on page 1191). Examiner notes that speed is relative with respect to a high-bandwidth connection. As such, examiner notes that the second speed is less than the first speed (e.g., 33 Kbps is less than 64 Kbps). Also shown, or inferred from the diagram, is a high bandwidth connection where the second speed is less than the third speed of the high bandwidth connection. In other words, the reference teaches upgrading the speed of a network by upgrading a user’s modem (e.g., see section 2, paragraph 3 on page 1191) such that the high-bandwidth connection speed is infinite in comparison with the second speed based on the technology implemented (i.e., the capacity of a dial-up connection can be increased as new technology is added such as by either upgrading the

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connection to a faster modem (e.g., 28.8 Kbps to 33.6 Kbps) or using a new technology such as DSL in reference to the abstract at page 1190).

*Garroppo* is silent or deficient with respect to a first device connected to a speed control layer (i.e., figure 1 is unclear with respect to the ISP connection on the Internet side). Examiner notes that it would have been obvious to one skilled in the art prior to applicant's invention to connect a first device to the Internet such that a first device is connected to a speed control layer. One motivation would be to allow a second device (i.e., the client) to connect with a first device such as a server on the Internet (e.g., for web surfing). As such, *Jones* cures the above-cited deficiency by disclosing on page 157 a client connected to an ISP (i.e., CO) which is in turn connected to a first device such as an Information Provider via the Internet. Furthermore, one skilled in the art would be motivated to combine both references as a whole since both reference disclose network communication in general and more particular communicating over the Internet using a dial-up connection (e.g., see page 169 of *Jones*).

As to **claim 2**, shown in the *Garroppo* reference is transporting the information over the Internet which could be considered a high-bandwidth LAN to someone skilled in the art.

As to **claim 3**, a skilled artisan would recognize that 28.8 and 33.6 kbps are modem speeds.

As to **claims 4 and 10**, examiner notes the second predetermined speed could be setup before the limiting step using the auto answering as disclosed in the reference.

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As to **claims 5 and 11**, as the access server and modems are capable of auto-answering, examiner also notes a possibility of a forth speed as well which is less than the first speed and less than the third speed of a high-bandwidth connection.

As to claims **6-8,12-14,17-19 and 22-24**, shown in the figure is more than one client connection such that there could be both a second and third device. Hence the properties of a client device in general could apply to a second or third device such that the same reasoning as mentioned in the rejection for claim 1 also applies.

As to **claims 16 and 21**, examiner notes a reasonable but broad interpretation of an interface in general that is used to set the second predetermined speed by using auto-answering.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick W. Ferris whose telephone number is (703) 305-4225.

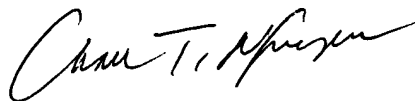
The examiner can normally be reached on M-F 9 A.M. - 4:30 P.M. E.S.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (703) 308-5340. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 305-3900.

Derrick W. Ferris  
Examiner  
Art Unit 2663

  
DWF



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